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OFFICE OF PETITIONS

In re Application of :
Carl G. Hellerqvist :
Application No. 09/776,865 : DECISION ON PETITIONS
Filed: February 2, 2001 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Atty Docket No. 22100-0100 (46126-252687) :

This is a decision on the petition, filed February 6, 2006, which is treated as a petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of priority to the prior-filed provisional and nonprovisional applications set out in the amendment embodied in the present petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above. In this regard, the amendment to claim benefit of priority to Application No. 10/823,506, filed April 12, **2004**, is improper since this application was filed subsequent to the above-identified application. A claim for benefit of priority must be directed to a "prior-filed" application. Accordingly, the amendment as presented is unacceptable.

The amendment as drafted is further unacceptable since the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority) must commence on a separate physical sheet. The rule at 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

In view of the above, an amendment which corrects the above deficiencies, along with a renewed petition under 37 CFR 1.78(a)(3) and 1.78(a)(6), must be submitted.¹

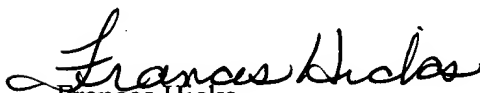
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3218:


Frances Hicks
Petitions Examiner
Office of Petitions

¹ The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).